

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1035 of 1986

with

FIRST APPEALS NO.1037, 1038, 1039, 1040 and 1041 of 1986

(Total : Six Appeals)

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE COMPANY LIMITED

Versus

BHARATBHAI ALIAS BABAN CHANDE MARATHEHE

Appearance:

MR. A.M.Kapadia for MR SB VAKIL for Petitioner

NOTICE UNSERVED for Respondent No. 1

MR P.G.Desai with Mr. M.K.Purohit for Respondent No. 2

MR SANDIP C SHAH for Respondent No. 3, 4, 5, 6, 7

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision:10/08/2000

C.A.V. (COMMON) JUDGEMENT

(Per : D.C.Srivastava, J.)

1. These Appeals arising out of the common Award of

the Motor Accident Claims Tribunal, Valsad at Navsari, can be disposed of by a common judgment.

2. Two other First Appeals No.1034 and 1036 of 1986 also arose out of the common judgment and Award of the same Tribunal which were decided by us on 24.7.2000 dismissing the above two Appeals.

3. Brief facts are that Luxury Bus No.MNP 3260 left Ahmedabad on 19.12.1982 at about 8.00 for Bombay. It was carrying 35 passengers. The bus at the relevant time was owned by M/s. Bagga Travels, but it was being run by M/s. Punjab Travels. Both the Travel Companies have their offices at Ahmedabad. At about 2.00 O'clock in the night of 19.12.1982/20.12.1982 the driver of the bus lost control between Valsad and Kila Pardi on National Highway No.8. The bus fell in ditch and turned turtle. Several passengers sustained injuries. Five passengers died and 4 were left with different injuries. Legal representatives of the deceased and injured filed different claim petitions claiming compensation alleging that the accident occurred due to rash and negligent driving of the bus by the driver.

4. First Appeal No. 1035/86 arose out of M.A.C. Petition No.43/83. First Appeal No.1037/86 arose out of M.A.C.Petition No.99 of 1983, First Appeal No.1038/86 arose out of M.A.C.Petition No.101/83. First Appeal No.1039/86 arose out of M.A.C.Petition No.105/83. First Appeal No.1040/86 arose out of M.A.C . Petition No. 106/83 and First Appeal No.1041/86 arose out of M.A.C.Petition No. 187/83.

5. In the claim petitions, out of which the Appeals under consideration arose, neither the driver of the vehicle filed any written statement nor the two travel companies. The appellant Insurance Company also failed to file written statement in time, but it had filed written statement at a late stage after the issues were framed.

6. The defence of the appellant - Insurance Company was that the Insurance Company is not liable because the permit was not filed and the bus was plied in breach of statutory conditions of Insurance Policy as well as in breach of Section 96(2)(b)(i)(c) of the Motor Vehicles Act of 1939. The accident in question was not denied by the appellant, however, the appellant pleaded that the bus plied as "stage carriage" and not as "contract carriage", whereas the permit was for contract carriage and thus there was breach of terms of permit as well as

of Insurance Policy.

7. The Tribunal repelled the defence of the appellant Insurance Company and awarded compensation to the claimants, with interest at the rate of 9 % as under:

Sr. Claim Petition Amount claimed Amount Awarded

No. No. (Rs.) (Rs.)

01.	43 of 1983	6,60,000/-	3,80,000/-
02.	99 of 1983	25,000/-	17,000/-
03.	101 of 1983	8,00,000/-	22,000/-
04.	105 of 1983	2,00,000/-	1,57,000/-
05.	106 of 1983	60,000/-	18,300/-
06.	187 of 1983	5,00,000/-	2,30,000/-

8. The factual and legal controversy arising out of these Appeals are practically concluded by our common Judgment in First Appeal No.1034/86 and 1036/86, decided on 24.7.2000. In short we have already held in the aforesaid Judgment that the accident occurred on account of rash and negligent driving of the bus by the driver. We have also held that M/s. Bagga Travel is the owner of the bus, but it was being plied by M/s. Punjab Travels. The arrangement between Bagga Travels and Punjab Travels was not brought before us at the time of hearing of earlier Appeals nor in the course of hearing of these two Appeals. It was also held by us that the vehicle was insured with the appellant and in which Bagga Travels was shown as the owner and not Punjab Travels. We also found that Punjab Travel had no privity of contract with the appellant Insurance Company. We further found, after giving due consideration to the definition of "Stage Carriage" and the "Contract carriage" and various pronouncements including the pronouncement of the Apex Court in Roshan Lal Gautam v/s. The State of U.P. and others, reported in AIR 1965 SC 991 that the vehicle was driven on the permit as "contract carriage" and it was not being plied as "Stage Carriage". We emphasised that for a vehicle being driven as contract carriage it is necessary that the vehicle should be driven from one point to another and it should not stop on the way for picking up or for dropping the passengers. We also held in the earlier Judgment delivered by us that it is not necessary that all the 35 passengers should not have paid separate fares and that the entire bus should have been taken on contract by one individual on behalf of all the 35 passengers. With these findings the said Appeals were dismissed. Consequently, these Appeals have also the

same fate, namely, they have also to be dismissed.

9. However, Shri A.M.Kapadia, learned Counsel for the Appellant in First Appeal No.1038 of 1986 argued that the facts of this Appeal are slightly different and as such the Insurance Company is not liable to pay any compensation to the claimant. His contention has been that in this Appeal as well as in claim petition No.101 of 1983 M/s. Bagga Travels was not made a party and since the vehicle is owned by Bagga Travels and Insurance Policy was also issued in the name of Bagga Travels, it is only when the Bagga Travels is made party than the liability of the Insurance Company can be fastened and enforced. He further contended that since Bagga Travels is not a party either in Appeal or in the M.A.C.Petition the Appeal No.1038 of 1986 deserves to be dismissed and the Award of the Tribunal rendered in Claim Petition No.101 of 1983 is required to be quashed.

10. We have examined this contention with regard to the cause title in First Appeal No.1038 of 1986 as well as in M.A.C.Petition No.101 of 1983 and we found that the respondent No.2 in the aforesaid Appeal and opposite party No.2 in M.A.C.Petition No.101 of 1983 is styled as "Shri Surjitsinh, Partner of Bagga Travels, 104, Vikram Chambers, Ashram Road, Ahmedabad." Thus Surjit Sinh was arrayed as opponent No.2 and respondent No.2 as partner of Bagga Travels. The Insurance policy issued by the appellant company is in favour of M/s. Bagga Travels and in this Insurance Policy name and address of insured is written as M/s. Bagga Travels, Partner Surjit Sinh (HUF), Vikram Chambers, Ashram Road, Ahmedabad. It is thus clear from the Insurance Policy that the owner of the Bus was M/s. Bagga Travels and M/s. Bagga Travel was shown as partnership concern of HUF of which Shri Surjitsinh was shown as partner. It is not clear from the Insurance Policy that M/s Bagga Travel is a registered Partnership firm. On the other hand indication appearing from the Insurance Policy is that it is HUF which runs partnership travel business in the name of M/s. Bagga Travels and Surjit Sinh is partner of HUF Partnership concern. If this is so, then the Bagga Travels could be sued through one of the partners of HUF firm. It seems from the cause title of the M.A.C.Petition as well as First Appeal No.1038 of 1986 that Surjit Sinh is shown as partner of Bagga Travels. Thus, for all purpose it will be deemed that Bagga Travels was represented by its one of the partners Shri Surjit Sinh as opponent No.2 before the Tribunal and as respondent No.2 in this Appeal. Consequently, we do not find force in the contention of Shri Kapadia that the

Insurance Company is not liable because Bagga Travels has not been impleaded as appellant in the claim petition as well as in First Appeal No.1038 of 1986. The distinction suggested by Shri Kapadia is therefore hardly acceptable to us.

11. For the reasons given above, we find that our Judgment in First Appeal Nos. 1034/86 and 1036/86 applies to all these Appeals under consideration. As such these Appeals are liable to be dismissed and are hereby dismissed.

12. So far as liability of the respondents is concerned the direction given and observation made by us in First Appeals No.1034/86 and 1036/86 shall govern these Appeals also.

13. Shri P.G.Desai has, however, requested us for direction to the Tribunal to refund the amount deposited by M/s. Bagga Travels in pursuance of order dated 11.10.1999 of this Court (Coram : Y.B.Bhatt & D.P.Buch, JJ.) in Civil Application No.2965 of 1988. Normally when the Appeals have been dismissed the amount deposited by the respondent No.2 should be paid to this respondent. It appears from the order in Civil Application No.2965 of 1988 that this Court (Y.B.Bhatt & D.P.Buch, JJ.) passed the following order :

"We direct that there shall be a stay of the impugned judgment and Award of the Tribunal in Motor Accident Claim Petition No.43/83 as against the owner as well, subject to the pre-condition that the applicant of Civil Application No.2965/88 deposits before the Tribunal a sum aggregating 50 % of the amount of the impugned Award (inclusive of cost and interest) latest by 17th November, 1999. On the deposit being made, the amount shall be invested by the Tribunal in a Fixed Deposit with a Nationalised or Scheduled Bank initially for a period of three years and on maturity shall renew the same by one year at a time without any further orders in this regard. The periodical interest which may accrue on this deposit may be withdrawn by the original claimants, namely, opponents No.3 to 7 of Civil Application No.2985/88."

14. In the above order, in our view, the owner means M/s. Bagga Travels and applicant of Civil Application No.2965 of 1988 also means M/s. Bagga Travels. Since the Appeals, including First Appeal No.1035/86, have been

dismissed by us as per order above, the amount deposited by M/s. Bagga Travels, respondent No.2, and kept in Fixed Deposit by the Tribunal shall be refunded by the Tribunal to the respondent No.2 M/s. Bagga Travels. The periodical interest, if paid, to the opponents No.3 to 7 shall not be recoverable from them. However, if periodical interest has not been paid to them the same shall be paid to the respondent No.2 now. To this extent the request of Shri P.G.Desai , learned Counsel for M/s. Bagga Travel is accepted.

15. On the facts and circumstances of this case there shall be no order as to costs in these Appeals.

sd/-

(D. C. Srivastava, J.)

Date : August 10, 2000 sd/-

(H. K. Rathod, J.)

sas